

REMARKS

This amendment is submitted in response to the final action mailed November 16, 2004. Favorable reconsideration of the application, as amended, is respectfully requested.

Claims 8, 9 and 53 were rejected under 35 U.S.C. 103(a) as being obvious over Miller et al. (WO 00/40794) in view of Vermilion et al. (U.S. 5,494,728). Applicants respectfully submit that the amended claims are nonobvious over the cited references. Claims 8 and 53 have been amended to incorporate claims 10 and 55. The Examiner has stated that the latter claims are patentable over Miller et al. and Vermilion et al. Therefore, amended claims 8 and 53 should likewise be patentable over these references. For at least the same reason, dependent claim 9 should also be patentable.

Claims 8-10, 53 and 55 were rejected under 35 U.S.C. 103(a) as being unpatentable over Schult (U.S. 4,911,975) in view of Yap et al. (U.S. 6,037,398) and Wilkes (U.S. 4,609,696). Applicants respectfully submit that the claims are nonobvious over the cited references. Claims 8 and 53 both recite an asphalt-based coating covering the top of the mat. In contrast, Schult discloses a polymer-based upper cover layer covering the top of the mat. At most, the polymer-based cover layer can include 5% asphalt. The Examiner stated that it would be obvious to modify the Schult product to replace the polymer-based cover layer with an asphalt-based material such as disclosed in Yap et al. or Wilkes. Applicants submit that such a modification would not be obvious, for at least the following reasons.

The title of the Schult invention is "Polymer Bitumen Web", referring to a web having a polymer-based upper cover layer and a bitumen-based lower sealing layer. The polymer-based upper cover layer is repeatedly referred to as the key part of the invention which provides advantages and overcomes the drawbacks of the prior art. The prior art is described as webs having a bitumen (asphalt)-based upper cover layer. To modify the web of Schult by replacing the polymer-based upper cover layer with an asphalt-based upper cover layer would completely change the invention. Therefore, a person of ordinary skill in the art would be motivated against replacing the polymer-based upper cover layer of Schult with an asphalt-based upper cover layer.

An object of the Schult invention is to provide a polymer bitumen sealing strip, sheet or band that can be readily sealed to adjoining strips in a highly reliable manner (col. 1, lines 64-68). This is accomplished by the use of adhesive edge strips which are provided on the edges of the web. Two such edge strips are laid together in an overlapping relationship to seal together adjoining webs. The webs are applied by overlapping the edges of the webs and fusing the overlapped edges together with a torch or the like. (See col. 3, lines 7-12 and 30-32.) Adhesive strips adhere more securely to polymer surfaces than to asphalt surfaces. Also, polymer strips are more suited than asphalt strips for fusing together with a torch or the like. Therefore, a person of ordinary skill in the art would further be motivated against replacing the polymer-based upper cover layer of Schult with an asphalt-based upper cover layer.

Schult states that the upper cover layer should have a smooth surface which increases the useful life of the web since it prevents accumulation of dust on the upper surface and encrustation which may result therefrom that may cause a tearing or lifting of the upper cover layer (col. 2, lines 19-24). A polymer-based material can be produced to have a smoother surface than an asphalt-based material. An asphalt-based cover layer would tend to collect dust instead of preventing its accumulation. Therefore, a person of ordinary skill in the art would further be motivated against replacing the polymer-based upper cover layer of Schult with an asphalt-based upper cover layer.

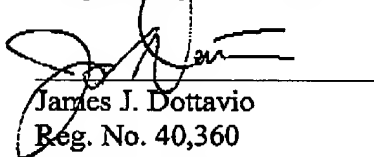
The objects of the Schult invention are achieved by using a light-colored upper cover layer. The patent teaches against using more than 5% bitumen (asphalt) in the upper cover layer. Again, to modify the web of Schult by replacing the light-colored polymer-based upper cover layer with a dark-colored asphalt-based upper cover layer would completely change the invention. Since the key of the invention is the light-colored polymer-based upper cover layer, it would not be obvious to scrap the polymer-based cover layer and use a completely different inventive idea to provide the desired advantages. Therefore, a person of ordinary skill in the art would be further motivated against replacing the polymer-based upper cover layer of Schult with an asphalt-based upper cover layer.

Applicants respectfully submit that any one of the above reasons is sufficient to motivate against replacing the polymer-based upper cover layer of Schult with an

asphalt-based upper cover layer. Therefore, it is submitted that the claims are nonobvious over the cited patents.

If any questions should arise with respect to the amendments or the above remarks, or if it would in any way expedite the prosecution of this application, it is requested that the Examiner contact Applicants' attorney at the number listed below. If any fees are due in connection with the filing of this amendment, including any fee for a required extension of time under 37 CFR 1.136(a) for which Applicants hereby petition, please charge all necessary fees to deposit account no. 50-0568.

Respectfully submitted,



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